

# Appendices

**DRAFT - Subject to continued negotiation**

## **EXCLUSIVE RIGHTS AGREEMENT**

**THIS EXCLUSIVE RIGHTS AGREEMENT** (“Agreement”) is made as of \_\_\_\_\_, 2005 between the District of Columbia, a municipal corporation (“District”), and Howard University, a non-profit corporation (“Howard”).

### **Recitals**

1. The District holds United States Reservation 13 (“Reservation 13”) in the District of Columbia pursuant to a Letter Transfer of Jurisdiction from the United States of America, acting through the General Services Administration, said Letter Transfer bearing date October 25, 2002, and filed of record in the Office of the Recorder of Deeds of the District of Columbia on October 30, 2002 as Instrument Number 2002125610.

2. Section 3 of the draft Master Plan for Public Reservation 13 Approval Act of 2002, effective April 11, 2003 (D.C. Law 14-300, D.C. Code § 10-1502), authorizes the construction of a hospital on a portion of Reservation 13.

3. Pursuant to the National Capital Medical Center Negotiation Emergency Resolution of 2003, Council Resolution No. 15-320, dated November 4, 2003, the Council declared the need to enter into discussions with Howard for the purpose of negotiating development of a new hospital on Reservation 13, and further declared that the District’s existing health care infrastructure is inadequate in part because of the uneven distribution of hospitals in the District.

4. The parties each believe that the development of a hospital and related facilities on a portion of Reservation 13 will result in efficiencies in, and expansion of, quality, cost-effective health care services to medically, underserved populations in the Southeast Community of the District.

5. As a result of the discussions between the District and Howard, the parties have negotiated this Exclusive Rights Agreement (“Agreement”) for the development of a hospital and related facilities on a portion of Reservation 13 identified as Sites B and C, consisting of approximately nine (9) acres (the “Property”).

Consequently, upon execution of this Agreement by Howard, the District is submitting this Agreement to the Council for its review and approval.

Now, therefore, in consideration of the foregoing premises and the mutual covenants set forth in this Agreement, the District and Howard agree as follows, intending to be legally bound:

## I. INTERPRETATION

### 1.1 Definitions.

**Commencement Date:** The later of October 1, 2005 or the date this Agreement is executed by the Mayor upon approval of the Council.

**Council:** The Council of the District of Columbia.

**Development Agreement:** as defined in Section 5.2

**Grant Agreement:** as defined in Section 5.1

**Ground Lease:** as defined in Section 5.3.

**Improvements:** as defined in Section 4.1.1.

**Infrastructure Costs:** as defined in Section 4.3.

**Key Professionals:** as defined in Section 2.1.5

**Mayor:** the Mayor of the District of Columbia.

**National Capital Medical Center:** as defined in Section 4.1.2

**NCMC Hospital:** as defined in Section 4.1.2.

**Planning Process:** as defined in Section 4.1.

**Preliminary Plan:** as defined in Section 4.11.

**Project:** as described in Section 4.1.1

**Project Costs:** as defined in Section 4.3.

**Project Documents:** the Agreement, Grant Agreement, Development agreement and Ground Lease

**Project Steering Committee,** as defined in Section 2.1.3

**Property:** as described in Recital 5

**1.2 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of laws principles).

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**1.3 Captions, Numberings and Headings.** Captions, numberings and headings of Articles, Sections, Schedules and Exhibits in this Agreement are for convenience of reference only and shall not be considered in the interpretation of this Agreement.

**1.4 Number; Gender.** Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

**1.5 Business Day.** In the event that the date for performance of any obligation under this Agreement falls on other than a business day, then such obligation shall be performed on the next succeeding business day.

**1.6 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

**1.7 Severability.** In the event that one or more of the provisions of this Agreement shall be held to be illegal, invalid or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Agreement shall continue in full force and effect, unless this construction would operate as an undue hardship on the District or Developer or would constitute a substantial deviation from the general intent of the parties as reflected in this Agreement.

**1.8 No Oral Modifications or Waivers.** No modification of this Agreement shall be valid or effective unless the same is in writing and signed by the District and Howard. No purported waiver of any of the provisions of this Agreement shall be valid or effective unless the same is in writing and signed by the party against whom it is sought to be enforced.

**1.9 Schedules and Exhibits.** All Schedules and Exhibits referenced in this Agreement are incorporated by this reference as if fully set forth in this Agreement.

**1.10 Including.** The word “including,” and variations thereof, shall mean “including without limitation.”

**1.11 Integration.** This Agreement and the Schedule appended to this Agreement and the documents and agreements referenced in this Agreement contain the entire understanding between the District and Howard with respect to the development and disposition of the Property, and are intended to be a full integration of all prior or contemporaneous agreements, conditions, understandings or undertakings between them with respect thereto. There are no promises, agreements, conditions, undertakings, understandings, warranties or representations, whether oral, written, express or implied, between the District and Howard with respect to the development and disposition of the Property other than as are expressly set forth in this Agreement and the Schedule appended to this Agreement and the documents and agreements referenced in this Agreement.

**1.12 No Construction Against Drafter.** This Agreement has been negotiated and prepared by the District, Developer and Guarantors and their respective attorneys and, should any provision of this Agreement require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

## **II. PARTIES**

### **2.1 Howard.**

2.1.1 Howard acknowledges that its educational and health service qualifications and experience are a material consideration to the District in entering into this Agreement. Howard agrees that it shall not assign its rights in whole or in part under this Agreement, or delegate its obligations in whole or in part under this Agreement, without the approval of the District, except as provided herein or in the Project Documents..

2.1.2 Howard acknowledges that the qualifications and experience of a project management firm to assist Howard in the development of the Property are a material consideration to the District entering into this Agreement. Prior to execution of a development agreement by the District, Howard shall provide to the District the written commitment of a project management firm selected by Howard, with the approval of the District. The District's approval shall not be unreasonably withheld. The project management firm's services will include assistance in (i) development of financing and operating plans., (ii) selection of Project professionals, (iii) development of architectural and engineering plans and schematic drawings, (iv) scheduling, (v) development of governing documents, (vi) development of community participation and affirmative action programs, (vi) obtaining all necessary governmental permits and licenses and (vii) management of construction.

2.1.3 Howard acknowledges that Howard's commitment to an open and transparent process for the development of the Project is a material consideration to the District in entering into this Agreement. Howard agrees that the personnel identified on Schedule 1 shall be Howard's representatives to a joint project steering committee with representatives appointed by the District. ("Project Steering Committee") that will be dedicated to the Project. The personnel identified on Schedule 2 shall be the District's representatives to the Project Steering Committee. The Project Steering Committee shall meet every thirty (30) days during all three Phases of the Project, with the first meeting to be held thirty days after the Commencement Date of this Agreement. The purposes of the Project Steering Committee will be to discuss the progress of the Project, to provide any information relevant to the Project that may be requested by a representative of the Project Steering Committee and generally to provide an open forum for discussion of any issues relevant to the Project. Howard and the District may from time to time substitute new representatives for the representatives identified on Schedule 1 and Schedule 2.

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2.1.4 Howard acknowledges that Howard’s commitment to develop a medical office building on the Property concurrently with development of a teaching hospital is a material consideration to the District in entering into this Agreement. Howard may itself develop the medical office building, or it may sub-lease a portion of the Property to a third-party developer to develop, operate and maintain the medical office building.

2.1.5 Howard acknowledges that Howard’s commitment to utilize certain key professionals and consultants in connection with the Project is a material consideration to the District in entering into this Agreement. Howard agrees that the professionals and consultants (“Key Professionals”) shall be identified and selected prior to execution of a Development Agreement between the District and Howard.

2.1.6 Howard acknowledges and agrees that Howard shall take all measures as shall be reasonably necessary to assure that all contracts entered into by Howard with respect to each major phase of the development and construction of the NCMC hospital, including contracts for architectural, engineering, and construction services, shall provide that at least 50% of the work in the aggregate under such contracts shall be awarded to local business enterprises, local small business enterprises, or local disadvantaged business enterprises, as such terms are defined in section 2 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998, effective April 27, 1998 (D.C. Law 12-268; D.C. Official Code § 2-217.01); provided, that of the percentage of the work required by this section to be awarded to local business enterprises, local small business enterprises, or local disadvantaged business enterprises, 35% of the work shall be awarded to local small business enterprises or local disadvantaged business enterprises, as such terms are defined in section 2 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998, effective April 27, 1998 (D.C. Law 12-268; D.C. Official Code § 2-217.01); provided further, that if the 35% requirement is unattainable, Howard shall report this to the District’s Council for reconsideration. Of the percentage of the work required by this section to be awarded to local small business enterprises or local disadvantaged business enterprises, not less than 20% of the work shall be awarded to local disadvantaged business enterprises.

2.1.7 Howard acknowledges that the District’s commitment to grant possession of the Property to Howard, as provided in this Agreement, is conditioned upon the District receiving written authority to convey such possession from the United States of America, through the General Services Administration (“GSA”). The District agrees to use this best efforts to endeavor to secure such written authority from GSA. Within the Exclusivity Period (as defined in Section 3.2 below.) The District shall commence such efforts and request such authority from GSA no later than thirty (30) days after the Commencement Date.

2.1.8 Howard acknowledges that its commitment to provide space and/or management services under contract for the District at the NCMC Hospital for key public health services, if requested by the District, is a material consideration for this

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Agreement. Such key public health services may include the following: (i) tuberculosis clinic, (ii) sexually transmitted disease clinic, (iii) Alliance pharmacy, (iv) HIV clinic, (v) mental health and substance abuse crisis unit, (vi) involuntary acute inpatient mental health services, (vii) inpatient and outpatient secure health services for the District's Department of Corrections, and (viii) such other key public health services that may be mutually agreed upon by Howard and the District. 2.1.9 Howard acknowledges and agrees that except for the transfer of the Ground Lease, construction and installation of the Infrastructure, and the funds to be provided under the Grant Agreement as contemplated by this Agreement, no subsidy or incentive will be required by Howard from the District in connection with its development of the Property (including performance of all obligations of Howard under the Development Agreement) and construction of Improvements. Nothing set forth in this Section 2.1.9 shall be deemed to prohibit or restrict Howard or third party developers, contractors or assigns from (i) applying for tax exempt financing in accordance with the usual rules and procedures of the District or (ii) applying for or receiving any subsidy or incentive that is generally available to be applied for as a matter-of-right for the Property and other properties in the District of Columbia that are similarly situated; or (iii) otherwise qualifying for any economic development program of the District of Columbia or the Federal government.

2.1.10 Howard agrees to move 250 of its licensed beds from Howard University Hospital to the NCMC hospital and keep the combined bed total of both the NCMC and Howard University Hospital under 482, which is the current number of beds licensed at Howard University Hospital.

2.1.11 Howard agrees to provide 100% of all working capital required prior to starting operation of NCMC hospital, 100% of all working capital to cover deficits expected in the first three years after operation of NCMC hospital and 100% working capital covering any unexpected operating deficits thereafter.

2.1.12 Howard agrees that the Level 1 Trauma Center and all associated services will be transferred from Howard University Hospital to NCMC hospital.

## **2.2 District.**

2.2.1 The District shall have the right to assign this Agreement to any agency or instrumentality of the District or to any other Person.

2.2.2 All rights of the District under this Agreement shall be exercised by the **Mayor** or by such Persons (including the City Administrator) as the Mayor may designate from time to time.

2.2.3 The District acknowledges that its commitment to develop of new building in the area known as Square L of Reservation 13 to house key public health services for the District's residents is a material consideration to Howard entering into this Agreement.

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The District acknowledges that NCMC hospital shall not be the sole healthcare provider responsible for all uninsured and/or publicly insured patients in the District. However, NCMC hospital shall be obligated to provide a proportionate share of the public health services for the underserved of the District as such obligation shall remain the shared obligation of all health care facilities in the District through the D.C. Medicaid and Healthcare Alliance Program, as amended..

2.2.4 The District further acknowledges and agrees that its continuance of the D.C. Medicaid and Healthcare Alliance Program or an equivalent comprehensive health coverage program for District residents under 200% of the Federal poverty level and not otherwise eligible for Medicaid or Medicare coverage is critical to the long-term financial solvency of NCMC Hospital and a material consideration to Howard entering into this Agreement and undertaking the development of the Project.

### **III. EXCLUSIVITY**

3.1 **Exclusivity.** The District agrees that during the Exclusivity Period, the District shall negotiate exclusively with Howard with respect to (i) the development and construction of all Improvements and (ii) the disposition of the Property.

3.2 **Exclusivity Period.** The “Exclusivity Period” shall commence on the Commencement Date and terminate on the earliest to occur of any of the following events:

3.2.1 One hundred eighty (180) calendar days after the Commencement Date of this Agreement unless extended in writing by mutual agreement of the District and Howard;

3.2.2 Notice from party to other party that it is terminating this Agreement at any time after an Event of Default has occurred with respect to which the declaring party has given any notice expressly required under this Agreement and the receiving party has failed to cure such Event of Default within any cure period expressly provided for in this Agreement; and

3.2.3 Upon the occurrence of such other events as may be specifically provided for in this Agreement.

### **IV. PLANNING SUBMISSIONS AND FUNDING PHASES**

4.1 Development and funding of the Project will proceed in three phases, Planning, Pre-Construction and Construction (“Phase” or collectively, “Phases”), in that order This Agreement will govern the first Phase, the Planning Process, as hereinafter described. Howard will be responsible for all submissions in the first Phase, except as may otherwise be provided in this Agreement. All submissions in this Agreement shall be subject to District approval. The District may, but is not required, to participate with Howard in the development of the submissions described below in the Planning Process. The parties agree to use good faith efforts to endeavor to complete the first Phase within six (6) months of the Commencement Date, the second Phase within twelve (12) months

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of the execution of Project Documents and the last Phase withing thirty (30) months of the conclusion of the pre-Construction Phase..

4.1.1 **General.** Within one hundred twenty (120) days of the Commencement Date of this Agreement, or such longer period as may be mutually agreed upon, Howard shall prepare for review by the District in accordance with this Article IV a preliminary plan (“Preliminary Plan”) for the development of the Property and the design and construction of the hospital and medical office building for physician offices (the “Improvements”). The goal of the Preliminary Plan shall be to reach consensus on the primary aspects the development of a state-of-the-art teaching hospital and medical office building at the Property (the “Project”)for purpose of preparing the Project Documents to be executed upon conclusion of the Planning Phase.The Preliminary Plan shall include at a minimum the following materials:

4.1.2 A description of the proposed governance for the new non-profit corporation to be incorporated by Howard including the representation that the District may have on the board of directors The new non-profit corporation will bear the name, “National Capital Medical Center” (“NCMC”). The purposes of the NCMC will be to (i) succeed to the rights of Howard under this Agreement and subsequent agreements relating to the Project, (ii) own and manage the new hospital and related facilities to be developed pursuant to this Agreement and subsequent agreements (the new hospital and related facilities collectively the “NCMC Hospital”), and (iii) coordinate programs, services, staff and fundingbetween Howard University Hospital and the NCMC Hospital, The governance description shall include Howard’s plan for NCMC Hospital becoming the primary teaching hospital for theHoward University School of Medicine.

4.1.3 A descriptoin of Howard’s plan for engaging project management firms and oth erprofessionals and consultants to assist Howard in the successful completion of all phases of the Project, including but not limited to pre-construction planning; coordination of all design, architectural services, and engineering services, including all drawings and specifications; and development of requests for proposals for all necessary professionals and consultants. The request for proposals and selection of a project management firm and Key Professionals shall be subject tocompetitive bidding and such othe rterms and conditions as the parties agree to in the Development Agreement. It is specifically understood and agreed that Howard shall inform the District in advance of any major partnerships in development, construction and management of the NCMC.

4.1.4 A business plan for the development of the Project, including but not limited to an inventory of the construction programs and services, staffing and operating budget, a five (5) year pro forma financial statement and all other cost budgets that the District may reasonably require.

4.1.5 A detailed financing plan for securing all funds necessary for the development of the Project, including sources of funding, and working capital for

covering expected deficits prior to and in the first three years of operation of NCMC hospital, and any unexpected deficits thereafter.

4.1.6 A development schedule, including dates.

4.1.7 A functional space program, including a description of the general space required by department and size, location and dimensions of (i) the hospital building, (ii) the medical office building and (iii) parking requirements.

4.1.8 A description of the required uses and programs to be undertaken by the NCMC Hospital. Such required uses and programs will include (i) inpatient care, (ii) trauma care, (iii) twenty-four (24) hour emergency services with triage services and referral to primary care and/or urgent care, (iv) twenty-four (24) hour urgent care, with Emergency Department triage, for non-emergency patients, (v) mental health and substance abuse intake/crisis unit (co-located with emergency room), (vi) inpatient psychiatric unit, including acute involuntary commitments, (vii) primary care services directly or through contract, (viii) ambulatory surgery, (ix) outpatient specialty services for all major specialties, (x) outpatient diagnostic/radiology services, and (xi) outpatient laboratory services.

4.1.9 A description of the permitted uses and programs to be undertaken by the NCMC Hospital. Such uses will include (i) long term care/SNF, (ii) space for schools of public health and medicine, research facilities and (iii) such other uses and programs as proposed by Howard and approved by the District.

4.1.10 A description of a public health operating plan, including (i) a plan for a continuum of care for specialty and diagnostic services; (ii) effective processes for follow-up with primary care providers, (iii) emergency and trauma transport, (iv) an electronic information data system for communication with primary care providers, (v) a plan to reduce the number of unnecessary emergency room visits and ambulatory care sensitive admissions, (vi) a program to provide health care for the underserved, regardless of ability to pay. Specifically, the programs and policies for serving the underserved shall include the following:

- A. NCMC hospital must not bill any District resident below 200% of poverty level for services
- B. NCMC hospital must develop a financial assistance program for patients between 200% and 400% of poverty level on a sliding fee scale. Assistance shall also be available to patients above 400% of poverty, but whose medical expenses have, or will, deplete individual or family income and resources to the point where the individual cannot pay for medically necessary services. Charges to patients in the above circumstances should be based on a reasonable percentage of their income/assets, not merely a discounted fee.
- C. Any amount owed by an individual who does not have 3<sup>rd</sup> party insurance, should be set based on costs or best negotiated rate, rather than “list price” or charges.

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- D. Financial assistance should be available for any medically necessary service, not just those services obtained on an emergency basis.
- E. NCMC hospital must notify patients of the availability of financial assistance.
- F. NCMC hospital must annually report to the Department of Health all uncompensated care and financial assistance as defined by hospital costs (not charges), not including bad debt, “shortfalls” from government programs, and contractual allowances from 3<sup>rd</sup> party payors.
- G. The NCMC governing board is required to review and approve all collections policies, including the policies of collections agents. Collections actions such as foreclosures, liens, and wage garnishments will require board authorization.

4.1.11 A plan for relocation of programs and services currently provided by the Howard University Hospital to the NCMC Hospital and the operating relationship between Howard University Hospital and the NCMC Hospital, including the Level 1 Trauma center and all associated services to be transferred from Howard University Hospital to NCMC hospital.

4.1.12 A plan describing a Community Participation Program which shall set forth, among other things, the community organization(s) with whom Howard proposes to discuss the Development Plan, a schedule for such discussions and type of information to be provided the community. This Community Participation Program shall encompass the period from the submission of the Community Participation Program until the issuance of the certificate of completion for the project. Howard shall document all community organization meetings held so as to provide a narrative description of the events of each meeting, including the concerns raised by the community organizations, and Howard’s responses to those concerns. Howard’s documentation of these community organization meetings shall be made available to the District within five (5) business days after the end of each calendar month. Howard shall include a summary of each community organization meeting held during the preceding month with the documentation of each meeting. The documentation and summaries shall be made available to the public by the District.

4.1.13 An Affirmative Action Plan (as that term is defined by law) describing an Affirmative Action Program which includes, in appropriate detail, the following:

- (i) The extent to which minorities are or will be represented as members of the development team, and the precise manner that such future representation shall be achieved.
- (ii) The extent to which contracting or subcontracting arrangements for minority business in the development of the Property will be provided, including specific goals, a schedule for meeting such

- goals, and the specific manner in which such goals will be achieved.
- (iii) The manner in which employment opportunities for lower income area residents as well as District residents and minorities will be provided in the development and operation of the Project to be built on the Property. This shall include specific goals and the specific manner in which area and District residents will be made aware of such job opportunities.
  - (v) Proposed remedies if Howard fails to meet the objectives of the Affirmative Action Plan.

4.1.14 Memorandum of Understanding (“LSDBE MOU”) with the Office of Local Business Development.

Pursuant to any LSDBE MOU, Howard will:

- (i) publicize available opportunities through private and public agencies, organizations and LSDBE business associations;
- (ii) solicit letters of interest through these agencies and organizations and from individual entrepreneurs and cooperate with public and privately funded business and technical assistance agencies and organizations, to assist in identifying potentially viable LSDBEs for contracting;
- (iii) commit to use commercially reasonable efforts to achieve a subcontracting goal (including sub-subcontractors at every tier) of thirty-five percent (35%) of business enterprises that are currently certified by OLBD or any successor governmental entity, as LSDBEs, in each case as of the effective date of the subcontract.

The provision of this subsection shall be made applicable to corporations, limited liability companies, partnerships, sole proprietorships, trusts, individuals or other entities that operate, reside or conduct business in the District of Columbia.

4.1.15 A First Source Agreement with the District of Columbia Department of Employment Services reasonably satisfactory to the District.

4.1.16 Audited financial statements for Howard University Hospital for its last three (3) fiscal years.

4.1.17 Withing thirty (30) business days of receipt of the foregoing Preliminary Plan, the District shall promptly review the materials described in sections 4.1.1 through 4.1.16, and forward to Howard such written comments as the District determines appropriate to establish the Project Documents.

4.1.18 Within thirty (30) business days after Howard’s receipt of the District’s written comments on the respective submissions, Howard shall complete revisions to the applicable portions to reflect the District’s comments and shall re-submit the revised materials to the District. The revised materials shall include such information as may be reasonably necessary to enable the District to evaluate the refinement of the revised materials, and such other information and materials as the District may reasonably request. Should the District approve the terms and conditions of the Preliminary Plan, the District shall issue a written notice to Howard stating that it has granted final approval of the Preliminary Plan.

4.1.19 The specific process described in Sections 4.1.1 through 4.1.18 is not intended by the District and Howard to be exclusive. The District and Howard agree to work cooperatively and in good faith to complete the Preliminary Plan within one hundred eighty (180) days of the Commencement Date, which may include submission by Howard of additional materials and information not specifically described in such sections, and the provision by the District of additional comments, guidance and approvals/disapprovals not specifically described in such sections. Without limiting the generality of the foregoing, the District and Howard agree to adhere generally to the schedule of submissions described in sections 4.1.1 through 4.1.19.

**4.2 Criteria for Submissions.** All submissions to the District pursuant to Section 4.1 shall be in such form as the District may reasonably require, and include such number of copies as the District may reasonably require.

**4.3 Project Costs.**

4.3.1 The District will, subject to available appropriations, undertake responsibility, at its sole cost and expense through the Anacostia Waterfront Corporation (“AWC”), for demolition of existing improvements on the Property, clearing, construction and installation of public roads and utilities, and remediating or removing, transporting and disposing of soils and other materials from the Property containing hazardous substances (collectively, the “Infrastructure Costs”). Infrastructure Costs shall not be included in the Project Costs and shall be the sole responsibility of the District. Infrastructure Costs shall not include any special costs required for a hospital facility, but such costs will be included within the Project Costs, as hereinafter defined.

In addition to funding the Infrastructure Costs and undertaking to perform the Infrastructure development, the District, subject to available appropriations, will fund fifty per cent (50%) of Project Costs. Notwithstanding the foregoing, the District’s 50% contribution to the Project Costs will be \$190,968,000. The District will also reserve a 10% contingency of \$10,600,000. This contingency shall not be spent unless the total shared Project Costs exceed \$381,936,000 and Howard contributes an equal amount of contingency funds. Thus, the District’s total contribution to the Project Costs shall not exceed \$201,568,000. Howard will fund the entire remaining balance of the Project Costs.

“Project Costs” shall mean the reasonable and necessary costs approved by the District of all architectural, engineering, planning, permitting and construction work in connection with the NCMC Hospital, parking as required by governmental authority related thereto, and all reasonable and necessary medical equipment related to the NCMC Hospital (but excluding any additional parking structures beyond the hospital parking or any other improvements that may be constructed on the Property), including without limitation all drawings, plans, specifications, permits or other approvals relating thereto, all insurance and bonds, all costs of construction, including supervision thereof, telecommunications cabling, and any changes, together with all related fees and expenses, general conditions and contingences, professionals and consultants, equipment and financing costs. Specifically, Project Costs shall include the following: the hospital facility; hospital parking garage; hospital medical equipment; architectural and engineering fees for the hospital and parking garage; furniture, fixtures and equipment for the hospital and parking garage; and owner administration for the hospital and parking garage.

It is specifically understood and agreed by the District and Howard that Project Costs shall not include any cost for the Medical Office Building or Research Building, including all soft costs such as architectural and engineering fees, medical equipment, furniture, fixtures and equipment, and owner administration. Any cost associated with the development and construction of the Medical Office Building or Research Building shall be the sole responsibility of Howard.

## **V. COMPLETION AND EXECUTION OF PROJECT DOCUMENTATION**

### **5.1 Grant Agreement.**

5.1.1 The District will provide and disburse its share of funds for Project Costs through the terms of a grant agreement (“Grant Agreement”), which will shall be subject to Council approval. Howard and the District agree to negotiate in good faith the form of such Grant Agreement between the District and Howard. The Grant Agreement will include the following provisions: (i) the Project will be funded fifty per cent (50 %) by Howard and fifty per cent (50%) by the District, in accordance with the specific terms and conditions stated in Section 4.3.1, (ii) the District will release its share of funds for each Phase after Howard has made its share of funds readily available to the reasonable satisfaction of the District, and (iii) each party’s share of funds will be deposited in an escrow or trust account to be established through the Grant Agreement. The Grant Agreement shall acknowledge that a portion of Howard’s share of the funding may be contributed by third party and Howard donations of services, equipment and supplies. Further, the Grant Agreement shall specify that the value of such donations of services, equipment and supplies shall be determined and apportioned by mutual agreements between parties.

5.1.2 The District will use good faith efforts to provide Howard an initial draft Grant Agreement on or before one hundred twenty (120) days after the Commencement Date and the District shall endeavor in good faith to complete

substantially the form grant agreement on or before the date that is one hundred eighty (180) days after the Commencement Date.

## **5.2 Development Agreement.**

5.2.1 Howard and the District shall negotiate in good faith the form of a development agreement (“Development Agreement”) between the District and Howard, governing the design, development, funding and construction of the Improvements from Pre-Construction phase through the Construction phase. The Development Agreement shall (i) include such terms as may be required by this Agreement and the Grant Agreement, and (ii) include such other terms as may be reasonably necessary or appropriate for the design, development, funding and construction of the Project during the period that commences at Pre-Construction and expires upon completion of Construction, provided that such other terms are consistent with the terms required by this Agreement, the Grant Agreement and the Ground Lease.

5.2.2 The District shall use good faith efforts to provide to Howard an initial draft Development Agreement on or before the date that is one hundred twenty (120) days after execution of the Commencement Date of this Agreement. Howard and the District shall endeavor in good faith to complete the Development Agreement on or before the date that is one hundred eighty (180) days after the Commencement Date. The Development Agreement shall contain the following provisions:

**Nondiscrimination.** A prohibition of discrimination upon the basis of race, color, religion, sex, national origin, sexual orientation or any other factor which would constitute a violation of the D.C. Human Rights Act or any other applicable law, regulation or court order in the sale, lease or rental or in the use or occupancy of the Property or any improvements constructed thereon.

a. **Equal Employment Opportunity.** Howard, for itself, its successors, and assigns, agrees that in the development of the Property:

- (i) Howard shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or any other factor which would constitute a violation of the D.C. Human Rights Act or other applicable law, regulation or court order.

Howard will use commercially reasonable efforts to ensure that employees are treated during employment, without regard to their race, color, religion, sex or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. Howard will be expected to promote equality in the workplace through the following: (i) employment, upgrading or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection

for training and apprenticeship. Howard agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the District of Columbia Department of Employment Services (“DOES”) setting forth the provisions of this non-discrimination clause.

- (ii) Howard will, in all solicitations or advertisements for employees placed by or on behalf of Howard, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin or any other factor which would constitute a violation of the D.C. Human Rights Act or other applicable law, regulation or court order.
- (iii) If Howard receives Federal financial assistance, if a union project, with respect to the Property, Howard shall:
  - (A) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the Department of Labor (“DOL”), advising the said labor union or worker’s representative of Purchaser’s commitments under Section 202 of the Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
  - (B) comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations and relevant orders of DOL, including the goals and timetables for minority and female participation and the Standard Federal Equal Employment Opportunity Construction Contract Specifications to the extent applicable;
  - (C) furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of DOL and HUD, and will permit access to its books, records and accounts pertaining to its employment practices by DOL and HUD for purposes of investigation to ascertain compliance with such rules, regulations and orders;
  - (D) require the inclusion of the provisions of paragraph (i) through (iii) of this subsection in every contract, subcontract or purchase order, unless exempted by rules, regulations, or orders of DOL issued pursuant to Section

204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor and vendor. Howard will take such action with respect to any contract, subcontract or purchase order as DOES or DOL may direct as a means of enforcing such provisions, including sanctions for noncompliance.

- (E) In the event of Howard's non-compliance with the nondiscrimination clause of this Agreement or with any applicable rule, regulation, or order, prior to completion of the development of the Property pursuant to the Development Plan, DOES and/or DOL may take such enforcement against Howard, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by law.
- (F) The provisions of this section shall be made applicable to corporations, limited liability companies, partnerships, sole proprietorships, trusts, individuals or other entities who operate, reside or conduct business in the District of Columbia.

In addition, a requirement that, if the Project is a union project:

- (i) Howard will cause the general contractor to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding; a notice advising said labor organization or worker's representative of the general contractor's commitments under this subsection and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- (ii) Howard will cause the general contractor to include this subsection in every subcontract for work in connection with the construction of the improvements comprising part of the Project and will, at the direction of DOES, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of the provisions of this section. Howard will require that general contractor will not let any subcontract where the general contractor has notice or actual knowledge that the subcontractor has been found in violation of these requirements, and will not let any subcontract unless the subcontractor has first provided the general contractor with a preliminary statement of ability to comply with the

requirements in this section. The provisions of this section shall be made applicable to corporations, limited liability companies, partnerships, sole proprietorships, trusts, individuals or other entities who operate, reside or conduct business in the District of Columbia.

### **5.3 Ground Lease.**

5.3.1 Howard and the District shall negotiate in good faith the form of a ground lease (“Ground Lease”) of the Property between the District and Developer. The Ground Lease shall (i) have a term of ninety-nine (99) years, (ii) provide for annual rent of one dollar (\$1.00) payable in advance for the entire ninety-nine (99) year term, (iii) provide for construction of improvements as may be required by this Agreement, the Development Agreement, and the Grant Agreement, (iv) have a provision requiring District consent for sub-leaseing or assigning the Ground Lease, (v) have provisions regarding mortgaging Howard’s interest in the Ground Lease, (vi) have provisions regarding the District’s right of first refusal and Howard’s right of first refusal, (vii) have provisions regarding Howard’s use of the Property and services and programs Howard must provide consistent with this Agreement, the Development Agreement and the Grant Agreement, (viii) have provisions regarding Howard’s obligation to provide space, at no cost to the District, in the NCMC Hospital, for public health programs of the District, (ix) and (x) include such other terms and provisions as may be usual and customary for ground lease transactions in the District of Columbia, or reasonably necessary or appropriate for the Property, provided that such other terms and provisions are consistent with the terms as may be required by this Agreement, the Development Agreement and the Grant Agreement. In addition, the Ground Lease will include among the programs and uses for the Property (i) a description of a public health operating plan as described in Section 4.1.10, (ii) the required uses and programs to be undertaken by the NCMC Hospital as described in Section 4.1.8 and (iii) the permitted uses and programs to be undertaken by the NCMC Hospital as described in Section 4.1.9.

5.3.2 The District shall use good faith efforts to provide to Howard an initial draft Ground Lease on or before the date that is one hundred twenty (120) days after the Commencement Date of this Agreement. Howard and the District shall endeavor in good faith to complete substantially the form of the Ground Lease on or before the date that is one hundred eighty (180) days after the Commencement Date of this Agreement, subject to such additional modifications to such form as may be reasonably necessary or appropriate based upon the final Development Agreement and grant agreements.

## **VI. PRE-CONSTRUCTION PHASE**

6.1 **Pre-Construction.** Each party’s obligation to proceed to the Pre-Construction phase shall be conditioned on the satisfaction of each of the following conditions, any of which may be waived by each party in writing:

## **Appendix A – Draft Exclusive Rights Agreement**

6.1.1 The Planning phase shall have been completed pursuant to this Agreement and the Project Documents executed by the District and Howard.

6.1.2 There shall exist no default on the part of either party of any of its material obligations under this Agreement.

6.1.3 All representations and warranties of the other party under this Agreement shall be correct in all material respects.

6.1.4 There shall exist no default on the part of the other party under the Development Agreement upon its execution.

6.1.5 There shall exist no order of any court that is binding upon the other party and that prohibits that party from consummating the Development Agreement.

6.1.6 The District's interest in the Property shall be in substantially the same or greater than as of the Commencement Date of this Agreement.

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## **VII REPRESENTATIONS AND WARRANTIES**

7.1 **Howard.** Howard hereby represents and warrants to the District as follows:

7.1.1 Howard is a non-profit corporation duly organized, validly existing and in good standing under the laws of the District of Columbia, duly qualified to conduct business in the District of Columbia, and has the power and authority to conduct the business in which it is currently engaged.

7.1.2 Howard (i) has the power and authority to execute, deliver and perform its obligations under this Agreement, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

7.1.3 No consent or authorization of, or filing with, any Person (including any governmental authority), which has not been obtained, is required in connection with the execution, delivery and performance of this Agreement by Howard,

7.1.4 This Agreement has been duly executed and delivered by each of Howard, and constitutes the legal, valid and binding obligation of Howard, enforceable against it in accordance with its terms.

7.1.5 The execution, delivery and performance by Howard of this Agreement will not violate any requirement of law or result in a breach of any contractual obligation to which Howard is a party.

## **Appendix A – Draft Exclusive Rights Agreement**

7.1.6 No litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the best knowledge of Howard, threatened by or against Howard which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Howard or its ability to perform its obligations under this Agreement.

7.1.7 The Financial Statements are complete and accurate as of the dates thereof. There has been no material adverse change in the financial condition of any Guarantor since the date of such Financial Statements.

**7.2 The District.** The District hereby represents and warrants to Howard as follows:

7.2.1 The District (i) has the power and authority to execute, deliver and perform its obligations under this Agreement, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Agreement.<sup>772</sup>

7.2.2 No consent or authorization of, or filing with, any Person (including any governmental authority), which has not been obtained, is required in connection with the execution, delivery and performance of this Agreement by the District.<sup>773</sup>

7.2.3 This Agreement has been duly executed and delivered by the District, and constitutes the legal, valid and binding obligation of the District, enforceable against it in accordance with its terms.

7.2.4 The execution, delivery and performance by the District of this Agreement will not violate any requirement of law or result in a breach of any contractual obligation to which the District is a party.

7.2.5 No litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the best knowledge of the District, threatened by or against the District which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the District's ability to perform its obligations under this Agreement.

## **VIII MISCELLANEOUS**

### **8.1 Events of Default.**

Each of the following shall constitute an "Event of Default"

8.1.1 Any party shall fail to perform any obligation required under this Agreement,

8.1.2 A party ceases to work on a good faith basis appropriate for the scale and type of Project and in a manner sufficient to accomplish completion of its obligations within the applicable times required under this Agreement; or

## Appendix A – Draft Exclusive Rights Agreement

8.1.3 Any representation or warranty of Howard made in this Agreement shall fail to be correct in any material respect on the date made.

8.1.4 Upon the occurrence of any Event of Default specified in Section 9.1, and the failure of the defaulting party to cure such Event of Default within thirty (30) days of receipt of written notice of such Event of Default from the other party (or if such Event of Default cannot reasonably be cured within such thirty (30) day period, then within such additional period of time as may be reasonable necessary to cure such Event of Default, provided that the defaulting party commences such cure in the initial thirty (30) days and thereafter diligently pursues such cure), the other party shall have the right (a) to terminate the Exclusivity Period by written notice to defaulting party, in which event all obligations and liabilities of the other party under this Agreement shall thereupon terminate; and/or (b) to pursue such other rights and remedies as may be available under this Agreement and applicable law.

8.2 **Recitals.** The Recitals set forth above are incorporated herein by reference.

8.3 **Binding Effect.** Upon its execution by the parties, this Agreement shall be binding upon and inure to the benefit of the District and Howard and their permitted successors and assigns. All provisions of this Agreement shall survive completion of the Project.

8.4 **Confidentiality.** Except as set forth below, Howard shall maintain as confidential and shall not publicly disclose the terms of this Agreement and any Project Documents. The District shall maintain as confidential and shall not publicly disclose the financial information provided by Howard. The foregoing shall not prohibit (i) disclosure to the extent required under applicable law or valid legal process, (ii) disclosure, on a need-to-know basis, to the employees, architects, attorneys and other professionals and consultants providing services in connection with the Project, and to prospective lenders and investors, provided that such parties acknowledge the confidentiality of such terms and agree not to disclose such terms except as permitted under this Section 8.4, and (iii) recordation of a Memorandum of Ground Lease in the Land Records of the District of Columbia. Any press release or other public statement that Howard proposes to issue pursuant to the foregoing sentence shall be subject to the prior review and approval by the District, such approval not to be unreasonably withheld.

8.5 **Waiver of Jury Trial; Jurisdiction.** The District and Howard each hereby waive any right to jury trial in connection with any suit, action, proceeding or claim relating to this Agreement or to the transactions contemplated by this Agreement. Any suit, action, proceeding or claim relating to this Agreement or the transactions contemplated by this Agreement shall be brought exclusively in the United States District Court for the District of Columbia or the Superior Court for the District of Columbia, and the District and Howard agree that such courts are the most convenient forum for resolution of any such action and further agree to submit to the jurisdiction of such courts and waive any right to object to venue in such courts.

## **Appendix A – Draft Exclusive Rights Agreement**

8.6 **No Recordation.** Howard shall not record this Agreement, or any memorandum or notice of this Agreement, in any public records.

8.7 **Notices.** Notices and other communications required or permitted under this Agreement shall be in writing and delivered by hand against receipt or sent by recognized overnight delivery service, by certified or registered mail, postage prepaid, with return receipt requested or by telecopy. All notices shall be addressed as follows:

If to the District:       The City Administrator  
                                  1350 Pennsylvania Avenue, N.W.  
                                  Washington, D.C. 20005  
                                  Attention: Robert C. Bobb  
                                  Telecopy: 202/727-9878

with a copy to:               Attention:  
                                  Telecopy: 202/

If to Howard:               Attention:  
                                  Telecopy: 202/347-2802

with a copy to:               Norman B. Leftwich, Esquire  
                                  Office of the General Counsel  
                                  Howard University  
                                  2400 6<sup>th</sup> Street, N.W. Suite 321  
                                  Washington, D.C. 20059  
                                  Telecopy: (202) 806-6357

or to such other addresses as may be designated by proper notice. Notices shall be deemed to be effective upon receipt (or refusal thereof) if personally delivered, sent by recognized overnight delivery service, or sent by certified or registered mail, postage prepaid, with return receipt requested, or upon electronically verified transmission, if such delivery is by telecopy.

8.8 **Time of Essence.** Time is of the essence with respect to the performance by the District and Guarantors of their obligations under this Agreement.

### **8.9 Anti-Deficiency Provision.**

8.9.1 The District and Howard acknowledge and agree that the obligations of the District to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein to which the District is a party, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342,

1349, 1351, (ii) the D.C. Official Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act, regardless of whether a particular obligation has been expressly so conditioned. The District agrees to exercise all lawful and available authority to satisfy any financial obligations of the District that may arise under this Agreement; however, since funds are appropriated annually by Congress on a fiscal year basis, and since funds have not yet been appropriated for the undertakings contemplated herein, the District's legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by Congress (nor shall such liability arise if, despite the District's compliance with Section 11.17.2, a request for such appropriations is excluded from the budget submitted by the Council to Congress for the applicable fiscal year). The District makes no representation or assurance that Congress will grant the authorizations and appropriations necessary for the District to perform its financial obligations under this Agreement.<sup>860</sup>

8.9.2 During the term of this Agreement, the Mayor or other appropriate official shall for each fiscal period include in the budget application submitted to the Council the amount necessary to fund the District's obligations hereunder for such fiscal period. Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District shall have any personal liability in connection with the breach of the provisions of this Section 8.9.2 or in the event of a default by the District under this Section 8.9.2

8.9.3 This Agreement shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation.

IN ACCORDANCE WITH §446 OF THE HOME RULE ACT, D.C. OFFICIAL CODE §1-204.46, NO DISTRICT OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THIS AGREEMENT UNLESS SUCH AMOUNT HAS BEEN APPROVED AND APPROPRIATED BY ACT OF CONGRESS.

8.10 **Agents and Representatives.** No person other than the parties to this Agreement, and the permitted assignees of such parties, shall have any liability or obligation under this Agreement. Without limiting the generality of the foregoing, Howard agrees that no consultant, contractor, agent or attorney engaged by the District in connection with this Agreement or the transactions contemplated by this Agreement shall have any liability or obligation to Howard under this Agreement.

**IN WITNESS WHEREOF**, the District and Howard have executed this Agreement.

DISTRICT OF COLUMBIA

By: \_\_\_\_\_

Approved for legal sufficiency:

\_\_\_\_\_

HOWARD UNIVERSITY

By: \_\_\_\_\_

**Schedules and Exhibits:**

Schedule 1:           Howard representatives to Project Steering Committee

Schedule 2:           District representatives to Project Steering Committee

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Executive Office of the Mayor



Robert C. Bobb  
Deputy Mayor and City Administrator

**September 30, 2005**

**Mark H. Tuohey III**  
**Chair**  
**DC Sports & Entertainment Commission**  
**2400 East Capitol Street, SE**  
**Washington, DC 20003**

**Dear Mr. Tuohey,**

We are working on a joint proposal with Howard University to build a new hospital facility, the National Capital Medical Center on the site of the former DC General Hospital at Reservation 13. The goal of this project is to build a full-service hospital on the East side of the District in order to equalize the distribution of hospital services and create a hub for the community health network on that side of the city. The District is also trying to meet the capacity needs as the population grows and be more prepared in the event of a major disaster.

Based on a recent traffic study conducted by Parsons Brinckerhoff for the District Department of Transportation, the proposed hospital would require approximately 1,500 parking spaces. The current proposal includes plans for an underground parking facility; however, there are parking and traffic constraints against an underground parking lots on the proposed site. We are trying to find alternative sites for parking.

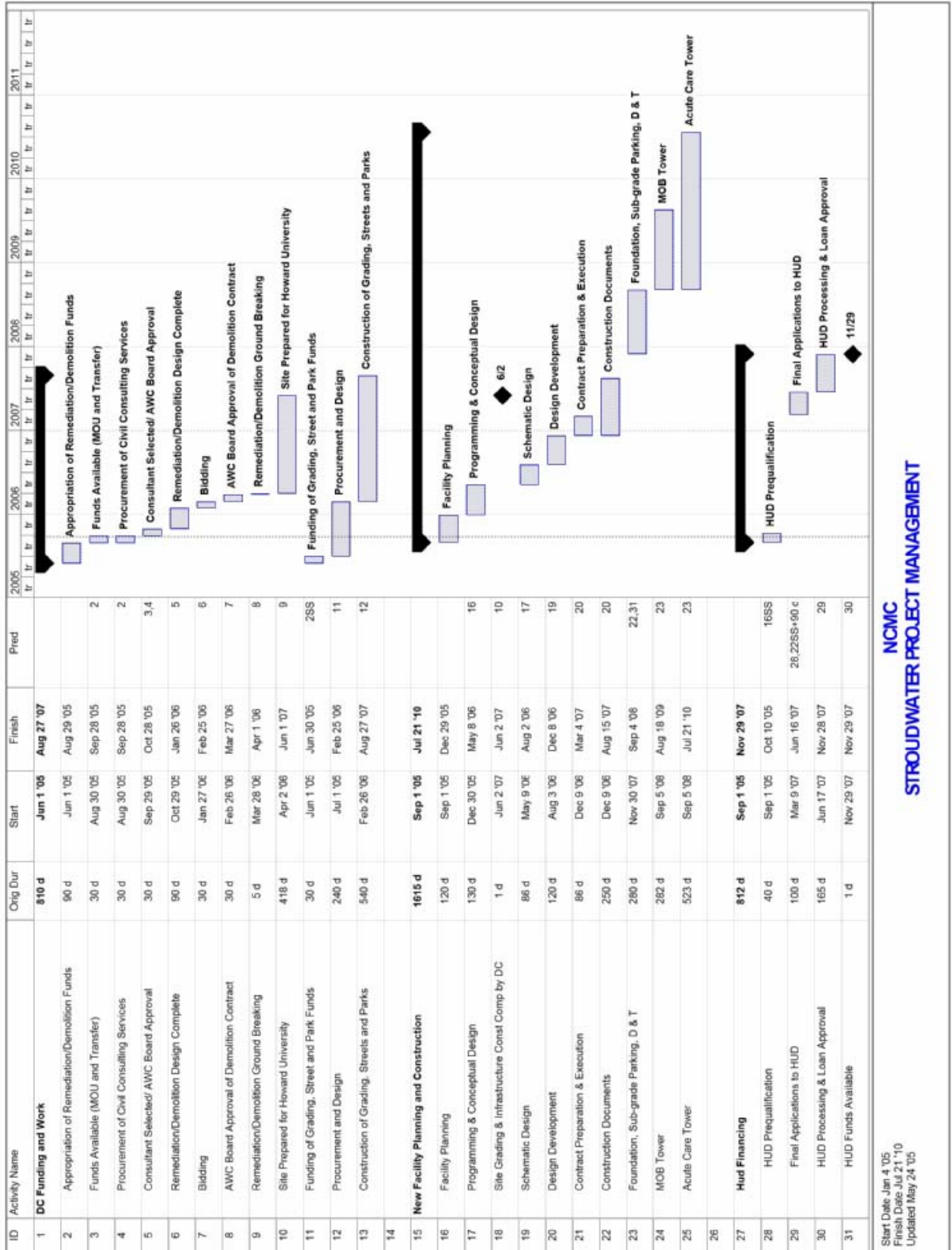
We would like to request the use of approximately 525,000 sq ft. to construct a parking lot for the National Capital Medical Center, on the site south of Independence Avenue and east of Water Street, which currently serves an overflow parking lot for RFK stadium. I welcome the opportunity to discuss this with you in further detail.

**Sincerely,**

A handwritten signature in black ink that reads "Robert C. Bobb".

**Robert C. Bobb**  
**Deputy Mayor / City Administrator**

## Appendix C – Project Schedule



Chairman Linda W. Cropp,  
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Linda W. Cropp, at the request of the Mayor, introduced the following bill,  
which was referred to the Committee on \_\_\_\_\_.

To amend the Health Services Planning Program Act of 1997 to exempt the National  
Capitol Medical Center from the certificate of need process.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the "Health Services Planning and Development  
Amendment Act of 2005".

Sec. 2. Section 8 of the Health Services Planning Program Act of 1997, effective  
April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-407) as follows:

A new subparagraph (h) is added to read as follows:

“(h) A proposal to develop the new institutional health service known as National  
Capital Medical Center to be located on Reservation No. 13, Washington, D.C. 20003, to  
authorize the relocation of existing health care services from Howard University Hospital  
located at 2041 Georgia Avenue, N.W., Washington, D.C. 20060 to the National Capital  
Medical Center, or make any associated capital expenditure that would otherwise be  
subject to certificate of needs requirements by a health care entity shall be exempt from  
certificate of need requirements as long as both of the following conditions are satisfied:

(1) The sum of the number of licensed beds for Howard University Hospital and National Capitol Medical Center shall not exceed a total of four hundred eighty-two (482) licensed beds as the term “licensed beds” is defined for purposes of the Health-Care and Community Residence Facility, Hospice and Home Care Licensing Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), as amended; and,

(2) Not more than one (1) year beginning on the day after that the health care entity obtains a certificate of licensure, pursuant to the Health-Care and Community Residence Facility, Hospice and Home Care Licensing Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), as amended, to operate the National Capital Medical Center has passed.”

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206(c)(1)) and publication in the District of Columbia Register.

**DRAFT**

Memorandum of Understanding  
Between  
The District of Columbia  
And  
Greater Southeast Community Hospital

September \_\_, 2005

This **Memorandum of Understanding** sets forth the agreement between the District of Columbia (“The District”) and Greater Southeast Community Hospital (“Greater Southeast”) to cooperate and coordinate the planning for the National Capital Medical Center and Greater Southeast to best serve the healthcare needs of the citizens of the District, particularly in Wards 6,7 and 8.

WHEREAS, the District government is dedicated to providing access to quality healthcare services to all its citizens;

WHEREAS, Greater Southeast is the primary source of inpatient and outpatient services to residents of Ward 8 and contiguous areas;

WHEREAS, the District and Greater Southeast have historically cooperated in providing services to the residents of Wards 6, 7 and 8;

WHEREAS, it is in the best interests of the District and its citizens to ensure that Greater Southeast continues to provide vitally needed services to this service area;

WHEREAS, the District, in partnership with Howard University, is proceeding with the development of the National Capital Medical Center as a tertiary, teaching hospital to fill a gap in needed services in Wards 5, 6 and 7 and to provide the District with a state of the art teaching and research facility;

WHEREAS, Greater Southeast is initiating a strategic and facility planning process to determine how best to serve the community;

WHEREAS, the District and Greater Southeast are desirous of coordinating the planning of both institutions to best serve the citizens of the District:

Therefore, it is agreed that:

1. The District and Greater Southeast will exchange information and data as developed on the planning for the National Capital Medical Center and Greater Southeast’s strategic facility planning in order to avoid duplication of effort and to provide for a common basis for addressing the healthcare needs of the community.
  - a. The District will provide Greater Southeast the demographic, market, physician and other data used in planning the National Capital Medical Center to date.

**Appendix E – Draft Greater Southeast Memorandum of Understanding**

- b. Greater Southeast will provide the District operating and financial data on Greater Southeast and planning assumptions, when available, for the strategic facilities plan.
2. Representatives of the District, Greater Southeast and their consultants will meet regularly, but not less than bi-monthly, in a Joint Planning Committee to review and coordinate the plans for each facility.
3. The District and Greater Southeast will explore opportunities to pursue a public/private partnership to provide public health services on the campus of Greater Southeast and in the District.
  - a. Consideration will be given to building facilities or leasing space for public health services provided by the District on the Greater Southeast campus
  - b. Consideration will also be given to contracting with Greater Southeast to provide certain health services for the District.
4. The District and Greater Southeast will coordinate planning for the opening of the National Capital Medical Center to provide adequate time for Greater Southeast to mitigate any impact of the NCMC on its programs and services.

Agreed to by:

FOR THE DISTRICT

FOR GREATER SOUTHEAST

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

DRAFT  
10/26/05

Chairman Linda W. Cropp  
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Linda W. Cropp, at the request of the Mayor, introduced the following bill,  
which was referred to the Committee on \_\_\_\_\_.

To amend the Hospital and Medical Services Corporation Regulatory Act of 1996 to  
modify the requirement that hospital service corporations and medical service  
corporations maintain open enrollment programs, to impose a tax upon premium  
payments received by hospital service corporations and medical service  
corporations, to establish a fund to provide basic health insurance coverage, and  
to make conforming changes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the “Hospital and Medical Services Corporation Regulatory  
Amendment Act of 2005”.

Sec. 2. The Hospital and Medical Services Corporation Regulatory Act of 1996,  
effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3501 et seq.), is  
amended as follows:

(a) Section 15 (D.C. Official Code § 31-3514) is amended as follows:

(1) Subsection (f) is repealed.

(2) Subsection (j) is amended to read as follows:

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10/26/05

1           “(j)   (1)   Pursuant to section 15A, a corporation shall contribute to a  
2 separately established Rate Stabilization Fund, each year, an amount necessary and  
3 appropriate to maintain the open enrollment program of the corporation required by this  
4 section, but not greater than \$550,000.00. The Fund shall be used solely to subsidize  
5 open enrollment subscriber contracts to promote affordable rates for individual  
6 subscribers eligible to enroll in the program pursuant to subsections (c) and (d) of this  
7 section. The Fund shall not be used to pay overhead, administrative, marketing,  
8 promotional, or other ancillary expenses associated with the program. The corporation  
9 may carry over unspent monies in the Fund from year to year.

10           “(2) In the rate filings for the open enrollment program required by section 9, the  
11 corporation shall provide documentation to the Department of Insurance, Securities, and  
12 Banking, confirming the existence of the Fund, identifying the amount actually paid out  
13 from the Fund to subsidize open enrollment rates, and specifying the Fund balance at  
14 year end and as of the date of the corporation’s filing. The Department of Insurance,  
15 Securities, and Banking may direct an independent audit of the Fund, the expenses of  
16 which shall be paid by the corporation. If the Department of Insurance, Securities and  
17 Banking determines, with or without an audit, that all or any portion of the money in the  
18 Fund is neither being used to subsidize open enrollment rates nor being reasonably set  
19 aside in anticipation of projected subsidies of open enrollment rates in future years, the  
20 Department shall so advise the Mayor, who may direct the corporation to pay over the  
21 revenue not being so used or set aside to the Affordable Health Coverage Fund  
22 established by section 15B.

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1 “(3) Within 10 days after the effective date of the Hospital and Medical Services  
2 Corporation Regulatory Amendment Act of 2005, a hospital or medical service  
3 corporation shall transfer all uncommitted funds held in the Rate Stabilization Fund,  
4 except for any funds necessary to maintain the open enrollment program for the current  
5 year, not to exceed \$550,000.00, to the D.C. Treasurer, and the D.C. Treasurer shall  
6 credit such funds to the Affordable Health Coverage Fund.

7 “(4) If a corporation is chartered as a charitable and benevolent organization, the  
8 contributions prescribed by paragraph (1) of this subsection shall not be deemed to  
9 constitute the complete satisfaction of the corporation’s obligation as a charitable and  
10 benevolent organization.”

11 (3) Subsection (k) is amended to read as follows:

12 “(k) (1) A corporation shall maintain its open enrollment program for  
13 subscribers who are enrolled in the program as of the effective date of the Hospital and  
14 Medical Services Corporation Regulatory Amendment Act of 2005 and shall continue to  
15 offer the program to each such subscriber for so long as the subscriber renews his or her  
16 coverage under the program upon the terms and conditions prescribed by the corporation.

17 “(2) The corporation shall be under no legal obligation to offer or  
18 maintain an open enrollment program for persons who are not subscribers enrolled in the  
19 program as of the effective date of the Hospital and Medical Services Corporation  
20 Regulatory Amendment Act of 2005. The corporation shall not use any revenue in the  
21 Rate Stabilization Fund to subsidize the open enrollment rate of any person who was not  
22 a subscriber to the open enrollment program as of the effective date of the Hospital and  
23 Medical Services Corporation Regulatory Amendment Act of 2005.

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10/26/05

1                   “(3) When all persons eligible to subscribe to the open enrollment  
2 program under paragraph (1) of this subsection cease to do so:

3                               (A) The obligation of the corporation to maintain an open  
4 enrollment program shall terminate; and

5                               (B) The corporation shall promptly pay to the D.C. Treasurer, as a  
6 payment otherwise due under section 15A, any funds remaining in the Rate Stabilization  
7 Fund, and such funds shall be credited to the Affordable Health Coverage Fund .”

8                   (4) A new section 15A is added to read as follows:

9                   “Section 15A. Tax and related payments.

10                   “A health or medical services corporation shall make those payments prescribed  
11 by section 47-2608 of the D.C. Official Code, or any successor statute..”

12                   (5) A new section 15B is added to read as follows:

13                   “Section 15B. Establishment of the Affordable Health Coverage Fund; purposes  
14 of the Fund; administration of the Fund; implementing rules.

15                   “(a) There is established a nonlapsing, revolving fund to be designated as the  
16 Affordable Health Coverage Fund, which shall be a segregated account within the  
17 General Fund of the District of Columbia and shall be used for the purposes set forth in  
18 subsection (e) of this section.

19                   “(b) All tax revenue derived from hospital and medical services corporations  
20 pursuant to section 15A, except for taxes upon real estate and fees and charges provided  
21 for by the insurance laws of the District, shall be deposited into the Fund.

22                   “(c) The Fund shall be administered by the Mayor.

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10/26/05

1           “(d) No amounts deposited in the Fund shall revert to the General Fund at the end  
2 of any fiscal year or at any other time. All such funds shall be continually available,  
3 without fiscal year limitation, for the purposes described in this section, subject to  
4 authorization by Congress in an appropriations act.

5           “(e) The Fund shall be used to provide basic health insurance coverage options to  
6 District of Columbia residents, to the extent of availability of funds, in the following  
7 order of priority:

8                   (1) District of Columbia residents in households at 200% to 249% of  
9 the federal poverty level;

10                   (2) District of Columbia residents in households at 250% to 299% of  
11 the federal poverty level;

12                   (3) District of Columbia residents in households at 300% to 349% of  
13 the federal poverty level; and

14                   (4) District of Columbia residents in households at 350% to 399% of  
15 the federal poverty level.

16           “(d) For purposes of this section, the term:

17                   (1) “Basic health insurance coverage” means comprehensive inpatient,  
18 outpatient, and preventative care.

19                   (2) “Federal poverty level” means --

20           “(e) The Mayor, pursuant to Title I of the District of Columbia Administrative  
21 Act, approved October 21, 1968 (82 Stat. 1204; D.C Official Code § 2-501 et seq.), may  
22 issue rules to implement the provisions of this section .

DRAFT  
10/26/05

1 “(f) The Mayor shall report annually to the Council on the revenues and activities  
2 of the Fund.”.

3 Sec. 3. Conforming amendments.

4 (a) Section 650(b) of the Life Insurance Act, approved March 3, 1901 (31 Stat.  
5 1291; D.C. Official Code § 31-205(b)), is amended by inserting the phrase “(which shall  
6 make the payments required by section 15A of the Hospital and Medical Services  
7 Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C.  
8 Official Code § 31-3514A))” after the phrase “nonprofit hospital and medical service  
9 corporations”.

10 (b) Section 47-2608 of the D.C. Official Code is amended as follows:

11 (1) Subsection (a) is amended by inserting the phrase “; provided, a  
12 hospital service corporation or medical service corporation may deduct from this sum the  
13 amount authorized under subsection (b-1) of this section” after the phrase “risks in the  
14 District of Columbia”.

15 (2) A new subsection (b-1) is added to read as follows:

16 “(b-1) A hospital service corporation or medical service corporation may deduct  
17 the corporation’s payment to the Rate Stabilization Fund under section 15 of the Hospital  
18 and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C.  
19 Law 11-245; D.C. Official Code § 31-3514), if any, from the amount otherwise due by  
20 the corporation under subsection (a) of this section..”

21 (c) Section 47-2608.01 of the D.C. Official Code is repealed.

22 Sec. 4. Fiscal impact statement.

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1           The Council adopts the fiscal impact statement in the committee report as the  
2   fiscal impact statement required by section 602(c)(3) of the District of Columbia Home  
3   Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-  
4   206.02(c)(3)).

5           Sec. 5. Effective date.

6           This act shall take effect following approval by the Mayor (or in the event of veto  
7   by the Mayor, action by the Council to override the veto), a 30-day period of  
8   Congressional review as provided in section 602(c)(1) of the District of Columbia Home  
9   Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-  
10   206.02(c)(1)), and publication in the District of Columbia Register.



ANTHONY A. WILLIAMS  
MAYOR

**HAND-DELIVERED**

September 8, 2005

H. Patrick Swygert  
President  
Howard University  
2400 6<sup>th</sup> Street, NW  
Washington, DC 20059

Dear President Swygert,

I am pleased with the progress that the District government has made in its joint project with Howard University to develop the National Capital Medical Center (NCMC). The new hospital is a crucial part of our effort to create a strong healthcare delivery system that is equitably distributed across the District, and it will also support the University's important mission of academic medicine.

As you know, I have made a personal commitment to the Council and the public to introduce NCMC legislation by October 1, 2005. A number of questions have been posed by members of the Council and public, and our joint team is charged with developing thoughtful responses to all of these questions. I understand that senior staff from Howard University and the District Government, as well as consultants representing Howard and the District, have been hard at work to finish the details of the proposal. As our date of legislative introduction approaches, I want to reiterate several of the key items the Council expects to receive from our team. We need to complete these items by September 16<sup>th</sup> in order to prepare the legislative package and accompanying materials.

- A signed Exclusive Rights Agreement (ERA). My expectation is that we will have some evidence of approval from Howard's Board of Directors prior to introduction.
- A detailed description of the services to be transferred from Howard University Hospital to the NCMC, including a commitment to move the Level One Trauma Center and maintain a total bed-count for both institutions that is within Howard University Hospital's current license.

- A joint financing proposal, including CFO certification for the District's portion and a commitment from the University to provide funds for its portion in the event that outside sources are not adequate.
- Projected operating financials for Howard University Hospital and the National Capital Medical Center, the two institutions that will be part of the new nonprofit corporation.
- A plan for NCMC's contribution to the community and an estimate of the size of that contribution.
- A final project budget and schedule, an analysis of NCMC costs vs. George Washington University Hospital costs, and an alternative conceptual design that maintains access to the Hill-East neighborhood via 21<sup>st</sup> Street.

By the end of this month, I am confident that we will have an exciting proposal to share with the Council. Ultimately, residents of the District, especially those on the east side of the city, will benefit from the new, world-class NCMC.

Sincerely,

A handwritten signature in black ink that reads "Anthony A. Williams". The signature is written in a cursive, flowing style.

Anthony A. Williams

Cc: Robert C. Bobb, City Administrator  
Hassan Minor, PhD, Senior Vice President

**The National Capital Medical Center  
A Partnership of Howard University and the District of Columbia  
Vision Statement**

**The NCMC will be a world-class, high quality, comprehensive medical center serving the National Capital region, and beyond. NCMC will:**

- Emerge as the hospital of choice for community residents and a destination hospital for key specialties
- Create an integrated system of care, that is both hospital and community-based
- Attract a balanced patient base, serving the full spectrum of the District's population
- Train outstanding new physicians and allied health professionals
- Foster cutting-edge medical research
- Achieve sustainable operating performance
- Serve as an economic engine to drive growth & vitality in the new Hill East neighborhood

**The NCMC will differentiate itself as:**

- An all-digital facility, with state-of-the-art medical equipment, patient safety systems and clinical information systems
- The first hospital built in the nation's capital since 9/11, with special facilities to serve the District of Columbia in the event of a homeland security disaster
- A backbone of the community's system of care, with a focus on prevention and wellness
- The locus of ground-breaking clinical and applied research that advances the overall state of medicine and improves health care outcomes, in areas including gerontology, environmental health, the neurosciences and clinical information technology

**Acute-care services will serve the community and draw patients from surrounding regions:**

- Medical/surgical and key specialties with focus on minimally invasive technology
- "Centers of Excellence" including: orthopedics, neurosciences, gerontology and oncology
- Obstetrics and gynecology services and a full array of women's health services
- Level 2 neonatal intensive care unit
- Pediatrics and adolescent medicine services
- Physical medicine and rehabilitation services
- Secure services

**Outstanding ambulatory services will provide emergency interventions, preventive services and chronic conditions management**

- Emergency Department with Level 1 trauma capabilities
- 24-hour urgent care for non-emergent patients
- Specialty and diagnostic services
- Comprehensive, high-tech ambulatory surgery
- Primary care and key programs that are conveniently located, and will improve the health status of District residents, including diabetes, oncology, gerontology, a fitness and wellness center, and community education

**The governance structure will foster regional control and coordination**

- The University will create a new corporation with an independent board of directors for the NCMC and Howard University Hospital